WO NOT FOR PUBLICATION IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA Michael S. McDonald, No. CV-02-1357-PHX-SRB Plaintiff, **ORDER** VS. Deputy Warden Schuster; et al., Defendants. 

This case has proceeded past the dispositive motion phase and is approaching trial. The Court believes that Plaintiff has met the requisite standard for appointment of counsel and hereby appoints David Rauch and Shane Gosdis as *pro bono* counsel for Plaintiff.

The law concerning appointment of counsel was fully set forth in Magistrate Judge Virginia A. Mathis's Order denying an earlier motion made by Plaintiff for appointment of counsel ("Order"). (Doc. 71.) To summarize, "an appointment of counsel may be requested under 28 U.S.C. § 1915(e)(1)¹ only in 'exceptional circumstances'. . . . A finding of exceptional circumstances requires an evaluation of both the 'likelihood of success on the merits [and] the ability of the petitioner to articulate his claims pro se in light of the complexity of the legal issues involved. Neither of these factors is dispositive and both must

<sup>27 | 128</sup> U.S.C. § 1951(e)(1) provides: "The court may request an attorney to represent any person unable to afford counsel."

## Case 2:02-cv-01357-SRB Document 86 Filed 03/14/06 Page 2 of 2

1 be viewed together before reaching a decision on a request for counsel under section 2 1915(d)." (Order at 1-2 (citations, quotations and some punctuation omitted).) 3 The Court believes that exceptional circumstances are present in this case. The Court 4 has requested that the above-stated attorneys undertake representation of Plaintiff on a pro 5 bono basis, and they have agreed. 6 The parties are advised that, at present, there is a March 21, 2006 deadline for the 7 submission of the Joint Proposed Pretrial Order. In light of the appointment of counsel, this 8 deadline is flexible. The parties are encouraged to meet and confer concerning a revised 9 deadline and advise the Court of their proposed revised deadline. 10 IT IS ORDERED appointing David Rauch and Shane Gosdis as counsel for Plaintiff. 11 IT IS FURTHER ORDERED that the Clerk of the Court shall send a copy of the 12 Complaint (Doc.1) and this Court's order on Defendant's Motion for Summary Judgment 13 (Doc. 57) to: 14 **David Rouch** 15 **Shane Gosdis** Snell & Wilmer 16 17 1 Arizona Center 18 400 East Van Buren St. 19 Phoenix, AZ 85004 20 DATED this 13th day of March, 2006. 21 22 23 24 25 United States District Judge 26 27

28